

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

08 CV 2936

UNITED NATIONAL SPECIALTY INSURANCE,  
COMPANY,

CIV:

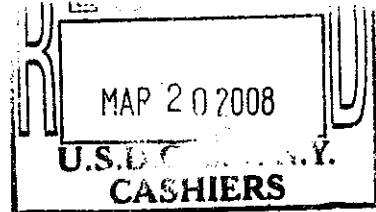
Plaintiff,

-against-

563-569 CAULDWELL REALTY LLC, f/k/a 381 E.  
160 EQUITIES, LLC, M&P REALTY MANAGEMENT  
LLC and OMAR PANIAGUA,

Defendants.

JUDGE SWEET  
COMPLAINT



Plaintiff, UNITED NATIONAL SPECIALTY INSURANCE COMPANY ("UNITED  
NATIONL"), by its attorneys, MIRANDA SOKOLOFF SAMBURSKY SLONE  
VERVENIOTIS LLP, complaining of the defendants, alleges, upon information and belief, as  
follows:

**THE PARTIES**

1. At all times hereinafter mentioned, plaintiff was and still is a corporation duly organized and existing under and by virtue of the laws of the state of Wisconsin, with its principal place of business located at Three Bala Plaza, East Bala Cynwyd, Pennsylvania.
2. At all times hereinafter mentioned, plaintiff was authorized to issue policies of insurance in the State of New York.
3. Upon information and belief, at all times hereinafter mentioned, defendant 563-569 Cauldwell Realty LLC, f/k/a 381 E. 160 Equities, LLC, is a New York limited liability company with a principal place of business located at 1814 58<sup>th</sup> Street, Brooklyn, New York 11219.

4. Upon information and belief, at all times hereinafter mentioned, defendant M&P Realty Management LLC is a Limited Liability Company located at 1564 56<sup>th</sup> Street, Brooklyn, New York 11219.
5. Upon information and belief, at all times hereinafter mentioned, defendant Omar Paniagua is an individual residing at 200 E. 205 Street, Apt. 5C Bronx, New York 10458.

### **JURISDICTION**

6. This Court has subject matter jurisdiction due to diversity of citizenship and amounts in controversy in excess of \$75,000, exclusive of interest and costs, pursuant to 28 U.S.C. Section 1332. Venue is proper in this district pursuant to 28 U.S.C. Section 1391 in that the claim arose in this district.
7. A controversy exists between the parties as to the coverage afforded under United National's policy of insurance number L7197722, as well as the provisions of said policy.
8. Circumstances exist that justify the determination by the Court, pursuant to 28 U.S.C. Section 2201, of the rights and obligations of the plaintiff as to the provisions of the aforesaid policy of insurance, a determination that will be beneficial to both plaintiff and defendants.
9. Plaintiff has no adequate remedy at law.

### **THE UNDERLYING ACTION**

10. On or around May 16, 2007, a lawsuit was filed in the Supreme Court of the State of New York, Bronx County, entitled, Omar Paniagua v. 381 E. Equities, LLC and 563 Cauldwell Associates, LLC, Index Number: 15240/07, seeking damages for alleged bodily injuries sustained by Omar Paniagua as a result of a radiator falling on his foot on October 19, 2006, (the "Underlying Action").

11. It is alleged in the Underlying Action that on or about October 19, 2006, defendant Omar Paniagua was hanging curtains in apartment F7 at 563 Cauldwell Avenue, Bronx County, when he was caused to suffer personal injuries by a defective radiator falling on his foot.

### **THE POLICY**

12. United National Specialty Insurance Company issued a General Liability Policy, policy number L7197722 to M&P Realty Management LLC, for the policy period April 1, 2006 through April 1, 2007, which affords coverage in accordance to its terms, provisions, and conditions (the "Policy"). 563-569 Cauldwell Realty LLC, f/k/a 381 E. 160 Equities, LLC are additional insureds under the policy.

### **REQUEST FOR DECLARATORY JUDGMENT**

13. Plaintiff repeats and realleges each and every allegation contained in the paragraphs of the complaint numbered 1 through 12 as if fully set forth at length herein.
14. The Policy provides in pertinent part as follows:

#### **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**

##### **2. Duties In The Event of Occurrence, Offense, Claim or Suit**

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
- (1) How, when and where the "occurrence" or offense took place;
  - (2) The name and addresses of any injured persons and witnesses;
  - and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

- b. If a claim is made or “suit” is brought against any insured, you must:
  - (1) Immediately record the specifics of the claim or “suit” and the date received; and
  - (2) Notify us as soon as practicable.You must see to it that we receive written notice of the claim or “suit” as soon as practicable.
- c. You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection of any claim of “suit”;
  - (2) Authorize us to obtain records of other information

\* \* \* \* \*

#### **Section V - Definitions**

**12.** “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful condition.

\* \* \* \* \*

- 15. Omar Paniagua’s alleged injuries were sustained on October 19, 2006 and the defendants had knowledge of this incident on that date.
- 16. United National received its first notice of the occurrence or claim on or about June 4, 2007, this was a delay of almost eight months by the defendants in providing notice.

17. The eight-month delay in providing notice to United National is improper, unreasonable and inexcusable.
18. The Policy condition requiring the forwarding of notice of an occurrence and claim as soon as practicable was thus breached by 563-569 Cauldwell Realty LLC, f/k/a 381 E. 160 Equities, LLC, M&P Realty Management LLC and Omar Paniagua, and any other party seeking coverage under the Policy, in connection with the Underlying Action.
19. United National disclaimed coverage based on late notice by disclaimer letter dated June 25, 2007 and reaffirmed its disclaimer through letters dated September 17, 2007 and October 8, 2007.
20. United National is therefore entitled to a declaration upholding its disclaimer of coverage and declaring that United National has no obligation to the defendants.

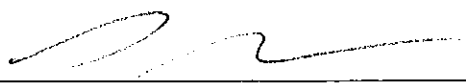
**WHEREFORE**, plaintiff UNITED NATIONAL SPECIALTY INSURANCE COMPANY prays that judgment be made and entered herein:

- (a) declaring that plaintiff is not obligated to defend and/or indemnify 563-569 Cauldwell Realty LLC, f/k/a 381 E. 160 Equities, LLC under United National's liability policy number L7197722, with respect to the claims in the Underlying Action; and
- (b) declaring that plaintiff is not obligated to defend and/or indemnify M&P Realty Management LLC under United National's liability policy number L7197722, with respect to the claims in the Underlying Action; and
- (c) declaring that plaintiff is not obligated to defend and/or indemnify Omar Paniagua under United National's liability policy number L7197722, with respect to the claims in the Underlying Action; and
- (d) granting to plaintiff such other and further relief as to this Court may deem just,

proper, and equitable under the circumstances, together with the costs and disbursements of this action.

DATED: Mineola, New York  
March 18, 2008

MIRANDA SOKOLOFF SAMBURSKY  
SLONE VERVENIOTIS LLP  
Attorneys for Plaintiff  
**UNITED NATIONAL SPECIALTY  
INSURANCE COMPANY**

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